

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 11, 2008
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9 **BEFORE THE**
10 **PHYSICIAN ASSISTANT COMMITTEE**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 1E-2007-182536

14 **SANDRA J. DAY, P.A.**
204 E. 18th Street #76
Marysville, California 95901

ACCUSATION

15 Physician Assistant License No. PA 17878

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Elberta Portman (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Physician Assistant Committee, Department of
21 Consumer Affairs.

22 2. On or about April 7, 2005, the Physician Assistant Committee issued
23 Physician Assistant Number PA 17878 to Sandra J. Day, P.A. (Respondent). The license was in
24 full force and effect at all times relevant to the charges brought herein and will expire on
25 November 30, 2008, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physician Assistant Committee (Committee) for the Medical Board of California, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3527 of the Code states in pertinent part as follows:

“(a) The committee may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.”

5. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6. Section 2238 of the Code states:

“A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.”

7. Section 2239(a) of the Code states:

“The use or prescribing for or administering to himself or herself, or any controlled substance; or any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is

1 conclusive evidence of such unprofessional conduct.”

2 8. California Code of Regulations, title 16, section 1399.525, in relevant part,
3 states: “For the purposes of the denial, suspension or revocation of a license or approval pursuant
4 to division 1.5 (commencing with section 475) of the code, a crime or act shall be considered to
5 be substantially related to the qualifications, functions or duties of a person holding a license or
6 approval under the Physician Assistant Practice Act if to a substantial degree it evidences present
7 or potential unfitness of a person holding such a license or approval to perform the functions
8 authorized by the license or approval in a manner consistent with the public health, safety or
9 welfare. Such crimes or acts shall include, but are not limited to, the following:

10 “(a) Violating or attempting to violate, directly or indirectly, or assisting in
11 or abetting the violation of, or conspiring to violate any provision or term of the Medical Practice
12 Act.

13 “(b) Violating or attempting to violate, directly or indirectly, or assisting in
14 or abetting the violation of, or conspiring to violate any provision or term of the Physician
15 Assistant Practice Act.

16 “(e) Any crime or act involving the sale, gift, administration, or furnishing
17 of narcotics or dangerous drugs or dangerous devices, as defined in Section 4022 of the code.”

18 9. Section 4022(a) of the Code states:

19 “Dangerous drug” or “dangerous device” means any drug or device unsafe
20 for self-use in humans or animals, and includes the following:

21 “(a) Any drug that bears the legend: “Caution: federal law
22 prohibits dispensing without a prescription,” “Rx only,” or words of similar import.”

23 10. Health and Safety Code section 11173(a) states:

24 “No person shall obtain or attempt to obtain controlled substances, or
25 procure or attempt to procure the administration of or prescription for controlled substances, (1)
26 by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

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1 11. Hydrocodone¹ is a dangerous drug with in the meaning of Section 4022 of
2 the Code and a Schedule III controlled substance within the meaning of Health and Safety Code
3 section 11056.

4 **FIRST CAUSE FOR DISCIPLINE**

5 (Obtaining or Attempt to Obtain a Controlled Substance by Fraud or Deceit)
6 [Bus. & Prof. Code §§ 3527, 2238; H&S § 11173(a); and Title 16, CCR, § 1399.525]

7 12. Respondent is subject to discipline under sections 3527 and 2238 of the
8 Code, and Title 16, CCR, section 1399.525 in that on or about the following dates she obtained
9 or attempted to obtain a controlled substance, hydrocodone, in violation of Health and Safety
10 Code section 11173(a).

11 13. On or about March 12, 2007, Respondent attempted to obtain hydrocodone
12 at the Longs Drugs in Yuba City. The circumstances are as follows:

13 a. On or about March 12, 2007, Karen Church, the Longs
14 Drugs pharmacist, received a call from "Christine." "Christine" requested two prescriptions to
15 be filled for "Lisa Reed." One prescription was for Norco and the other was for Ibuprofen.
16 "Christine" stated that the she was calling for Dr. Phuang at Sutter North Urgent Care.
17 Ms. Church suspected that the calls were fraudulent and notified the Yuba City Police
18 Department.

19 b. Later on or about March 12, 2007, Respondent attempted to
20 pick up the aforementioned prescriptions. Respondent was contacted and questioned by Yuba
21 City Police Officer Jackson. Respondent admitted when asked that "Lisa Reed" was a fictitious
22 name that she had called in when pretending to call from the doctors office.

23 c. Respondent admitted to being addicted to hydrocodone.
24 Officer Jackson placed Respondent under arrest.

25 14. On or about June 10, 2007, Respondent attempted to obtain hydrocodone
26 at the Walgreen's in Yuba City. The circumstances are as follows:

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28 1. Hydrocodone is contained in brand name pharmaceuticals Norco, Vicodin and Lortab.

1 a. On or about June 9, Edward Salaquinto, the Walgreen's
2 pharmacist, received a call from "Rebecca" at Dr. Su's office. "Rebecca" requested that
3 prescriptions be filled for "David Morgan" and "Marie Vincent." The prescriptions were for,
4 among other things, hydrocodone.

5 b. Later on June 9, 2007, Mr. Salaquinto received a call from "Leslie"
6 at Dr. Su's office. "Leslie" called in prescriptions for "Robert Warner," "Douglas Quinn," and
7 "Michelle Lapp." Again, these prescriptions were for, among other things, hydrocodone.
8 Mr. Salaquinto was suspicious and called Dr. Su's office. Mr. Salaquinto confirmed that neither
9 a "Rebecca" or "Leslie" worked there.

10 c. On or about June 10, 2007, Respondent came to Walgreen's to
11 pick up a hydrocodone prescription for "Michelle Flapp." The Yuba City Police Department
12 were called.

13 d. Yuba City Police Department Officer Cheney questioned
14 Respondent about why she was attempting to pick up "Michelle Flapp's" prescription. After
15 some questioning, Respondent admitted that she had posed as "Rebecca" and "Michelle" from
16 Dr. Su's office when she had called in the prescriptions noted above. Respondent was arrested
17 and searched.

18 e. As a result of this search, a prescription information packet and
19 pharmacy receipt for hydrocodone were found in the name of "Michelle Lapp." The receipt
20 indicated that the prescription had been filled on June 9, 2007. Respondent told Officer Cheney
21 that she had purchased this prescription. Respondent said that she had taken all of the
22 prescription on June 9, 2007. Respondent told Officer Cheney that she made up the name
23 "Michelle Lapp."

24 f. Respondent admitted to being addicted to Vicodin and that she
25 takes approximately 20 pills a day.

26 g. Respondent admitted to calling in all of the prescriptions called in
27 by "Rebecca" and "Leslie." Respondent also said that she always called in a couple of antibiotics
28 along with the narcotics to make it look less suspicious.

1 15. On or July 10, 2007, Respondent attempted to obtain hydrocodone at the
2 Walgreen's in Yuba City. The circumstances are as follows:

3 a. On or about July 10, 2007, Ramandeep Kalkat, the
4 Walgreen's pharmacist, received a call from "Theresa" who was calling on behalf of Dr. B.
5 Beiler of Regency Urgent Care in Yuba City who prescribed an antibiotic for a "Steven Huff." A
6 short time later, "Theresa" called again with a prescription of Norco for "Mary Devore."

7 b. Ms. Kalkat was suspicious and called the Regency Urgent
8 Care to confirm the prescription requests. Ms. Kalkat was told that these prescriptions were not
9 called in by Regency Urgent Care.

10 c. At about 10:00 p.m. on July 10, 2007, Ms. Kalkat received
11 a call from "Mary Devore" asking about the status of her prescription. Ms. Kalkat told "Mary
12 Devore" that she ("Ms. Devore") was not in the Walgreen's system. "Mary Devore" provided
13 her date of birth, address and social security number. Ms. Kalkat said that she would process the
14 prescription and that the pharmacy closed at 11 p.m. "Ms. Devore" said that she would be in
15 before closing time.

16 d. Ms. Kalkat called the Yuba City Police Department.
17 Ms. Kalkat was told to call again, if "Mary Devore" showed up.

18 e. On or about 10:53, "Mary Devore" came to the Walgreen's
19 Pharmacy drive-up window. Ms. Kalkat asked "Mary Devore" to come into the store.
20 Ms. Kalkat again called the Yuba City Police Department.

21 f. Yuba City Police Officer Hansen went to the Walgreen's
22 and met with Ms. Kalkat. Ms. Kalkat told Officer Hansen that "Mary Hansen" never came into
23 the store. A search was conducted, but "Mary Devore" was not found.

24 g. On or about July 17, 2007, Respondent admitted that she
25 called in "Mary Devore's" prescription and tried to pick it up on July 10, 2007.

26 16. On or July 17, 2007, Respondent attempted to obtain hydrocodone at the
27 Walgreen's in Yuba City. The circumstances are as follows:

28 a. On July 10, 2007, Officer Hansen was called to the

1 Walgreen's because Respondent was attempting to pick up "Mary Devore's" prescription.

2 b. Respondent admitted that she called in "Mary Devore's"
3 prescription on July 10, 2007. She admitted to trying to pick it up. She also admitted to trying
4 pick it up on July 10, 2007.

5 17. Respondent's conduct of attempting to fraudulently obtain hydrocodone,
6 as discussed above, in violation of Health and Safety Code section 11173(a), sections 3527 and
7 2238 of the Code, and Title 16, CAR, section 1399.525 constitutes unprofessional conduct
8 within the meaning of section 3527 of the Code.

9 **SECOND CAUSE FOR DISCIPLINE**

(Use of Dangerous Drugs)

10 [Bus. & Prof. Code §§ 3527, 2239(a); and Title 16, CAR, § 1399.525]

11 18. Respondent is subject to disciplinary action under sections 3527, 2239(a);
12 of the Code and Title 16, CAR, section 1399.525 in that she has been using and prescribing
13 controlled substances to herself in an injurious or dangerous manner constitutes unprofessional
14 conduct. The circumstances are set forth below.

15 19. Complainant realleges paragraphs 12 through 17 as if fully set forth herein.

16 20. On May 2, 2007, Respondent admitted to being addicted to hydrocodone
17 to Medical Board Investigators Maya and Vanderveen. Respondent also submitted a urine
18 sample. Laboratory results showed the presence of opiates and cocaine metabolite.

19 21. On May 3, 2007, Respondent admitted to taking cocaine for a toothache to
20 Investigator Maya. Respondent also admitted to having a high tolerance for Vicodin.
21 Respondent also said that some days she takes up to 80 Vicodin pills.

22 22. On June 12, 2007, Respondent submitted another urine sample. Again,
23 laboratory results showed the presence of opiates and cocaine metabolite.

24 23. Respondent's conduct of using and prescribing controlled substances to
25 herself constitutes unprofessional conduct in violation of sections 3527, 2239(a); of the Code and
26 Title 16, CAR, section 1399.525.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Physician Assistant Committee issue a decision:

4 1. Revoking or suspending Physician Assistant Number PA 17878, issued to
5 Sandra J. Day, P.A.

6 2. Ordering Sandra J. Day, P.A. to pay the Physician Assistant Committee
7 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3; and

9 3. Taking such other and further action as deemed necessary and proper.
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11 DATED: April 11, 2008

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13 ELBERTA PORTMAN
14 Executive Officer
15 Physician Assistant Committee
16 Department of Consumer Affairs
17 State of California
18 Complainant
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